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No. 92-191

In the Supreme Court of the United States

OCTOBER TERM, 1992

INTERCONTINENTAL LIFE INSURANCE COMPANY, PETITIONER

v.

LOU R. LINDBLOM, RESPONDENT

On Petition for a Writ of Certiorari to the Supreme Court of Alabama

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

In her brief in opposition, respondent does not take issue with *any* of the fundamental propositions that are advanced in the petition. She does not deny that the court below has disclaimed the necessity for any sort of relationship between punitive and compensatory damages. She does not deny that the Alabama Supreme Court has disavowed the sort of searching review of punitive jury awards that this Court found essential in *Pacific Mutual Life Insurance Co.* v. *Haslip*, 111 S. Ct. 1032 (1991). And while she purports to find no confusion among the lower courts about the meaning of *Haslip*, she simply does not address the evidence of disarray marshalled in the petition – evidence that, as we explain below, is bolstered by a recent decision of the *en banc* Fourth Circuit. See *Johnson* v. *Hugo's Skateway*, No. 90-2499 (4th Cir. Sept. 8, 1992).

Instead, respondent aims her contentions at straw men. She reads our petition to argue for "the judicial imposition of

a rigid ratio or relationship between the compensatory damages and punitive damages,'' and to ''ask[] this Court to overturn the factual findings of the jury and to reject the trial judge's and the state supreme court's analysis of the evidence presented at trial.'' Br. in Opp. 8, 9. But that is a patent misreading of the petition. We ask only for what *Haslip* appears to guarantee: ''some understandable relationship'' between punitive and compensatory damages (111 S. Ct. at 1045), along with ''meaningful and adequate review'' of punitive verdicts by the state courts. *Id.* at 1044. Respondent accordingly advances no reason for the Court to deny review of the substantial issues presented here.

1. We explained in the petition (at 13) that the court below construed *Haslip* not to require any meaningful relationship between the punitive and compensatory components of an award. Rather than take issue with our reading of the Alabama decisions, respondent *defends* the position of the court below, relying principally on this Court's denial of certiorari in post-*Haslip* cases. Br. in Opp. 11-13. But while those denials of review certainly indicate that the Court has not in the past been prepared to reenter the punitive damages arena, they hardly offer substantive support for the Alabama Supreme Court's holding. And as noted above, *Haslip* certainly appears to mandate that punitive damages not be ''grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages'' (111 S. Ct. at 1045) – a requirement, as we explain in the petition (at 12), that appears necessarily to follow from the justifications for punitive awards. Yet respondent fails even to attempt to explain how a punitive award 80 times the size of the out-of-pocket loss serves the goals of punishment and deterrence.

2. We also demonstrated in the petition (at 19-24) that the court below has disavowed the sort of searching review of jury verdicts upon which the holding in *Haslip* was grounded

– so that, in the words of a justice of the Alabama Supreme Court, Alabama law does not "authorize the type of 'independent review' Haslip's counsel described to the United States Supreme Court." *Armstrong* v. *Roger's Outdoor Sports, Inc.*, 581 So.2d 414, 426 (Ala. 1991) (Maddox, J., dissenting). Instead, the state court, in its post-*Haslip* decisions, has employed a "presumption of correctness of the jury verdict." *Id.* at 421. The *en banc* Fourth Circuit's recent decision in *Johnson* confirms that such a system is not supportable under *Haslip*.

In *Johnson*, a federal diversity action, the jury was given a general instruction relating to punitive damages that was strikingly similar to the one at issue in *Haslip*. Compare *Johnson*, slip op. 11, with 111 S. Ct. at 1044. But the court of appeals believed (see slip op. 10-12) that appellate review of the *Johnson* verdict by a federal court was constrained by the Seventh Amendment – so that, as now also is true in Alabama, a searching and independent review of the evidence was impossible. Because the Fourth Circuit understood *Haslip* to hinge the constitutionality of a punitive damages system on "almost de novo post-verdict and appellate reviews" (*id.* at 10), it concluded "that the scheme utilized to award punitive damages in [*Johnson*] violated the Due Process Clause." *Id.* at 12. That holding cannot be reconciled with the system of review now in place in Alabama.

For her part, respondent pointedly does not deny that the Alabama courts employ a presumption of correctness in reviewing punitive verdicts. See Br. in Opp. 17. Instead, she insists that we are asking this Court to review the evidence placed before the jury. But that is not so: our focus is on the *nature of the review* provided by the Alabama courts. And that review plainly was so deferential as not to be "meaningful and adequate" within the meaning of *Haslip*.

That comes clear from respondent's own statement of the evidence. Reduced to its essentials, she alleges that InterCon-

tinental never provided her with notification that her payments were late, and erred in believing that it was legally entitled to lapse her policy in the circumstances of this case. See Br. in Opp. 19. The courts below concluded that the jury, looking to this evidence, was entitled to imagine that InterContinental had been engaged in an elaborate, years-long scheme to defraud all of its policyholders. If that deferential standard of review is adequate, juries will have a license to award damages in unlimited amounts against all deep-pocket, out-of-state defendants. That is a formula for the return of excessive and fundamentally unfair punitive awards.

3. The confusion in the lower courts regarding the constitutional requirements relating to punitive damages is manifest. Respondent does not, and could not, deny that one state supreme court has accused two others of disregarding *Haslip*'s import. See Pet. 11. Although respondent appears to suggest otherwise (see Br. in Opp. 14-15), judges of other courts have stated flatly that *Haslip* "did not make clear which elements of a system of awarding punitive damages are constitutionally necessary" (*Hilgedick* v. *Koehring Fin. Corp.*, 8 Cal. Rptr. 2d 76, 94 (Cal. Ct. App.), r'hrg denied and opinion modified, No. A039723, 1992 WL 10057 (Cal. Ct. App. May 14, 1992) (concurring opinion)) – which is hardly surprising, since two Members of this Court made an identical observation in *Haslip* itself. See 111 S. Ct. at 1054 (Scalia, J., concurring in the judgment); *id.* at 1055 (Kennedy, J., concurring in the judgment). The same confusion is evident in *Johnson*, where dissenters commented that *Haslip* "provides little, to no, guidance for determining whether other state schemes * * * comport with due process." Slip op. 22-23 (Murnaghan, J., dissenting) (footnote omitted). See *id.* at 42 (Luttig, J., concurring in part and dissenting in part) (majority "simply misread[s] *Haslip*"); *id.* at 57 (Hamilton, J., dissenting) (majority "elevates the dissent in *Haslip* to the law of this circuit").

Whatever the Court's views on the requirements of due process in this setting, such confusion in the lower courts is intolerable. As even the limited list of examples offered in the petition (at 17-18 n.12) make clear, the volume of ongoing punitive damages litigation is enormous. By clarifying the standards governing that litigation, this Court would take an important step that would benefit plaintiffs and defendants alike.

For the foregoing reasons and the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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